

Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of Texas, Houston Division on the following

☒ Trademarks or ☐ Patents. (☐ the patent action involves 35 U.S.C. § 292.);

DOCKET NO. 4:12-cv-295	DATE FILED 1/30/2012	U.S. DISTRICT COURT Southern District of Texas, Houston Division
PLAINTIFF Linkable, LLC		DEFENDANT Linkable Networks, Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 4,071,374		A copy of the Complaint is attached to this form.
2		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
3		
4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK DAVID J. BRADLEY	(BY) DEPUTY CLERK 	DATE 1/31/2012
----------------------------------	--	-------------------

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LINKABLE, LLC

Plaintiff,

v.

LINKABLE NETWORKS, INC.

Defendant.

§
§
§
§
§
§
§

CASE NO. 4:12-cv-295

PLAINTIFF'S ORIGINAL COMPLAINT AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Linkable LLC ("Plaintiff Linkable") hereby files this its Original Complaint and Jury Demand against Defendant Linkable Networks, Inc. ("Defendant Linkable Networks") and in support thereof would respectfully show the Court as follows:

I. INTRODUCTION

1. This is an action by Plaintiff Linkable arising from infringement of Plaintiff Linkable's registered trademark by Defendant Linkable Networks. Despite written and verbal notification of its infringing activities, Defendant Linkable Networks continues to infringe Plaintiff Linkable's trademark on its websites, in its software and through the products and services that it offers to the general public and to advertisers. Defendant Linkable Networks has infringed Plaintiff Linkable's trademark, violated the Lanham Act, inflicted trademark dilution and engaged in unfair competition. Plaintiff Linkable seeks damages, an accounting, the imposition of a constructive trust upon Defendant Linkable Networks' illegal profits, and injunctive relief.

I. THE PARTIES

2. Plaintiff Linkable is a corporation organized in Delaware with its principal place of business located at 5542 Valkeith Dr., Houston, TX 77096. Plaintiff Linkable provides a software

and web accessible service enabling its users to save and access online information, and for advertisers to promote products or services based upon Plaintiff Linkable users' saved information.

3. Upon information and belief, Defendant Linkable Networks is a corporation organized in Delaware that does business on the internet and in Houston, Texas. Defendant Linkable Networks is engaged in the business of providing software and web accessible service enabling its users, including users in Houston, Texas, to save and access local discounts on products and services, and for advertisers to promote products or services based upon Defendant Linkable Networks' users' saved information. Defendant Linkable Networks maintains its principal place of business at 268 Summer Street, Boston, MA 02210. The Texas Secretary of State is the agent for service of process on Defendant Linkable Networks because Defendant Linkable Networks is a nonresident who engages in business in Texas, but does not maintain a regular place of business in this state or a designated agent for service of process in this proceeding that arises out of its business done in this state and to which it is a party. The Texas Secretary of State, as agent for service of process in Texas, may serve Defendant Linkable Networks with process by serving its registered agent, Thomas J. Burgess at 225 Franklin Street, 26th Floor, Boston, MA 02110.

II. JURISDICTION

4. This Court has subject matter jurisdiction over Plaintiff Linkable's claims for trademark infringement and related claims pursuant to 15 U.S.C. § 1121, 25 U.S.C. §§ 1331 and 1338(a).

5. This Court has supplemental jurisdiction over Plaintiff Linkable's claims arising under the laws of Texas pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Plaintiff Linkable's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

6. This Court's exercise of personal jurisdiction over Defendant Linkable Networks is

consistent with due process and would not offend traditional notions of fair play and substantial justice. Defendant Linkable Networks offers its products and services into the State of Texas. By advertising and marketing its services and products through its website and offering such products and services into the State of Texas, Defendant Linkable Networks has engaged in continuous and systematic activities within Texas and is doing business in Texas sufficient to establish jurisdiction in Texas. Defendant Linkable Networks' Texas activity is directly related to the advertising, marketing and offering of its services and products in Texas by making unauthorized and infringing use of Plaintiff Linkable's trademark.

III. VENUE

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(c) and 1400(a) because (a) the acts of infringement and other wrongful conduct alleged occurred in the Southern District of Texas, (b) Defendant Linkable Networks is a corporation subject to personal jurisdiction in this judicial district and therefore "resides" in this district, (c) a substantial part of the events giving rise to the claim occurred in this district, and (d) Defendant Linkable Networks has a sufficient connection with the Southern District of Texas to make venue proper in this district, all as alleged in this Complaint.

IV. FACTS COMMON TO ALL CLAIMS

8. Plaintiff Linkable maintains a website at www.Linkable.com (the "Linkable Site").
9. Plaintiff Linkable has developed and promotes a patent-pending online service through the Linkable Site enabling any person with an internet connection to create an account to save information such as web URLs and to have one-click access to saved information through the person's Linkable account.
10. Plaintiff Linkable derives its revenue through an advertising platform enabling advertisers to

pay for advertising that is targeted to users based upon the information saved by users to their Linkable accounts.

11. Plaintiff Linkable's business name, software, service and website, which is "Linkable," is a trademark, duly and properly registered in the United States Patent and Trademark Office on the Principal Register:

Mark Literal Elements: LINKABLE

US Registration No.: 4071374

(hereinafter, "Mark")

12. A true and correct copy of Plaintiff Linkable's Trademark Registration is attached hereto as Exhibit 1 and is incorporated by reference.

13. Plaintiff Linkable actively protects its Mark and has successfully enforced its Mark rights against infringement including successfully shutting down a web-browser extension called "Linkable" from Google's Chrome Web Store and shutting down an infringing application called "Linkable" that had been published in Apple's iOS App marketplace.

A. Defendant Linkable Networks' Infringement

14. Defendant Linkable Networks is engaged in marketing and offering to the general public a nationwide discount and savings program accessible through its websites www.MyLinkables.com and www.LinkableNetworks.com.

15. Defendant Linkable Networks' services and products both for the general public and for advertisers make pervasive unauthorized and infringing use of Plaintiff Linkable's protected Mark.

16. Defendant Linkable Networks' websites, www.LinkableNetworks.com and www.MyLinkable.com, are replete with infringement of Plaintiff Linkable's protected Mark as evidenced by the pages from Defendant Linkable Networks' website attached hereto as Exhibits 2, 3 and 4.

17. On or about October 10, 2011, Defendant Linkable Networks' CEO, Tom Burgess, contacted Plaintiff Linkable through Plaintiff Linkable's online contact form regarding "a potential business transaction" without revealing Defendant Linkable Networks' interest in Plaintiff Linkable's Mark or disclosing the name of the company he represented. Because the inquiry did not mention Defendant Linkable Networks' plan to use Plaintiff Linkable's mark, Plaintiff Linkable ignored the apparent solicitation and was unaware then that Defendant Linkable Networks' solicitation was related to Defendant Linkable Networks' desire to acquire Plaintiff Linkable's brand.

18. On or about November 6, 2011, Defendant Linkable Networks' COO, David Carlock, sent a hand-delivered letter with no postage or return-address to Plaintiff Linkable's Houston address. The letter expressed interest in purchasing Plaintiff Linkable's domain name. The letter did not disclose the infringing name of the company associated with the solicitation, and it contained only a Houston-area phone number and the COO's personal email address. Curiously, this letter did not disclose David Carlock's association with Defendant Linkable Networks and its infringing use of Plaintiff Linkable's Mark.

19. Eventually, Plaintiff Linkable engaged in negotiations with Defendant Linkable Networks from approximately November through December of 2011 to seek an agreement that would adequately compensate Plaintiff Linkable for its intellectual property. These negotiations were unsuccessful and Defendant Linkable Networks continues to violate Plaintiff Linkable's intellectual property.

20. On or about December 21, 2011, Plaintiff Linkable notified Defendant Linkable Networks that it was making unauthorized and infringing use of Plaintiff Linkable's Mark. Despite this prior notification by Plaintiff Linkable, Defendant Linkable Networks has continued to willfully infringe Plaintiff Linkable's intellectual property.

21. Beyond the infringing use of Plaintiff Linkable's Mark, Defendant Linkable Networks' wrongful conduct includes using confusingly similar language, design elements and colors in various parts of its websites, which when combined with Defendant Linkable Networks' infringing use of Plaintiff Linkable's Mark, further increase the extent and severity of consumer confusion. Examples of this confusingly similar content from Defendant Linkable Networks' website are attached hereto as Exhibits 2, 5 and 6 and are incorporated by reference.

22. Various features offered by Defendant Linkable Networks function in an extremely similar way to features offered by Plaintiff Linkable, adding an additional source of consumer confusion. For example, both services offer a web-based "button" allowing their users to save online information as they visit websites to their respective "Linkable accounts," such that the information can be accessed by the users at a later time. Examples of Plaintiff Linkable and Defendant Linkable Networks' web buttons are attached hereto as Exhibits 7 and 8 and are incorporated by reference.

23. On information and belief, Defendant Linkable Networks' wrongful conduct includes advertising, marketing and/or distribution of "infringing materials," specifically software products and services that make unauthorized use of Plaintiff Linkable's Mark.

24. Through its conduct, Defendant Linkable Networks has misappropriated Plaintiff Linkable's title, Mark and style of doing business.

B. Claim One
Trademark Infringement – 15 U.S.C. § 1114 by Defendant Linkable Networks

25. Plaintiff Linkable repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 26, inclusive.

26. Defendant Linkable Networks' activities constitute infringement of Plaintiff Linkable's federally registered Mark in violation of the Lanham Trademark Act, including but not limited to 15 U.S.C. § 1114(1).

27. Because Plaintiff Linkable advertises markets, distributes, and licenses its software exclusively under the Mark described in this Complaint, this Mark is the means by which Plaintiff Linkable's offering is distinguished from the offerings of related items of others in the same or related fields.

28. Through Plaintiff Linkable's use of its registered Mark in its products and services, the Mark "Linkable" has come to mean, and to be understood by customers, end-users and the public, to specify the products and services of Plaintiff Linkable.

29. The infringing materials that Defendant Linkable Networks has and continues to use, offer, advertise, market or distribute are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

30. Both Plaintiff Linkable and Defendant Linkable Networks provide their offerings through similar channels: Both Plaintiff Linkable and Defendant Linkable Networks provide free online "Linkable Accounts," Plaintiff Linkable users' accounts are called "My Linkable" and Defendant Linkable Networks users' account are called "MyLinkables." Furthermore, significant overlap exists in the audiences likely to encounter either company's brand and in the type of people likely to use either company's service. Plaintiff Linkable's typical customer and Defendant Linkable Networks' typical customers are tech-savvy internet users and both companies sell their respective platforms to advertisers of consumer goods and services.

31. Further, Defendant Linkable Networks' activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendant Linkable Networks is using, advertising, marketing, offering or distributing originate or belong to Defendant Linkable Networks or are authorized by Plaintiff Linkable, to the damage and harm of Plaintiff Linkable and the public.

32. Upon information and belief, Defendant Linkable Networks has pervasively used, offered, advertised, marketed or distributed infringing material after being notified by Plaintiff Linkable of these illegal activities, with the purpose of misleading or confusing customers and the public as to the origin and authenticity of the infringing materials and of trading upon Plaintiff Linkable's business reputation and intellectual property.

33. At a minimum, Defendant Linkable Networks acted with willful blindness to and in reckless disregard of Plaintiff Linkable's registered Mark.

34. As a result of its wrongful conduct, Defendant Linkable Networks is liable to Plaintiff Linkable for trademark infringement. 15 U.S.C. § 1114(1). Plaintiff Linkable has suffered damages. Plaintiff Linkable is entitled to recover damages, which include any and all profits Defendant Linkable Networks has made as a result of its wrongful conduct. 15 U.S.C. § 1117(a).

35. In addition, because Defendant Linkable Networks' infringement of Plaintiff Linkable's Mark was willful, within the meaning of the Lanham Act, the award of actual damages and profits should be trebled pursuant to 15 U.S.C. § 1117(b). Alternatively, Plaintiff Linkable is entitled to statutory damages under 15 U.S.C. § 1117(c).

36. Plaintiff Linkable is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a) and to an order compelling the impounding of all infringing materials being used, offered, marketed, or distributed by Defendant Linkable Networks pursuant to 15 U.S.C. § 1116, subsections (a) and (d)(1)(A).

37. Plaintiff Linkable has no adequate remedy at law for Defendant Linkable Networks' wrongful conduct because, among other things, (a) Plaintiff Linkable's Mark is unique and valuable intellectual property, (b) Defendant Linkable Networks' infringement constitutes harm to Plaintiff Linkable such that Plaintiff Linkable could not be made completely whole by any monetary award,

(c) if Defendant Linkable Networks' wrongful conduct is allowed to continue, the public is likely to become further confuse, mistaken, or deceived as to the source, origin or authenticity of the infringing materials, and (d) Defendant Linkable Networks' wrongful conduct, and the resulting damage to Plaintiff Linkable, is continuing.

C. Claim Two

Federal Unfair Competition – 15 U.S.C. § 1125 et seq. by Defendant Linkable Networks

38. Plaintiff Linkable repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 39, inclusive.

39. Because Plaintiff Linkable advertises, markets, and distributes its software and products under the Mark described in this Complaint, such Mark is the means by which Plaintiff Linkable's software or products is distinguished from the software or products of others in the same field or related fields.

40. Because of Plaintiff Linkable's continuous, and exclusive use of this Mark, Plaintiff Linkable's Mark has come to mean, and is understood by customers, end users, and the public to signify, software or services of Plaintiff Linkable.

41. Defendant Linkable Networks' unlicensed and unauthorized programs, goods and services have caused and are likely to cause confusion, deception, and mistake by creating the false and misleading impression that Defendant Linkable Networks' goods, programs and services are created or distributed by Plaintiff Linkable or are associated or connected to Plaintiff Linkable, or have the sponsorship, endorsement or approval of Plaintiff Linkable.

42. Defendant Linkable Networks' wrongful conduct includes the use of Plaintiff Linkable's marks, name, and/or imitation visual designs, specifically displays and graphic designs that are virtually indistinguishable from Plaintiff Linkable's visual designs, in connection with their goods and services.

43. Upon information and belief, and particularly after being notified by Plaintiff Linkable of its wrongful and infringing activities, Defendant Linkable Networks engaged in such wrongful conduct with the willful purpose of misleading or confusing customers and the public as to the origin and authenticity of the goods and services offered, marketed or distributed in connection with Plaintiff Linkable's mark, name, and imitation visual designs and of trading upon Plaintiff Linkable's goodwill and business reputation. Defendant Linkable Networks' conduct constitutes (a) false designation of origin, (b) false or misleading description, and (c) false or misleading representation that the imitation visual images originate from or are authorized by Plaintiff Linkable, all in violation of § 48(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).

44. Defendant Linkable Networks' wrongful conduct is likely to continue unless restrained and enjoined.

45. As a result of Defendant Linkable Networks' wrongful conduct, Plaintiff Linkable has suffered and will continue to suffer damages. Plaintiff Linkable is entitled to injunctive relief and to an order compelling the impounding of all imitation marks and visual designs being used, offered, advertised, marketed, installed, or distributed by Defendant Linkable Networks. Plaintiff Linkable has no adequate remedy at law for Defendant Linkable Networks' wrongful conduct because, among other things, (a) Plaintiff Linkable's mark, name and visual designs are unique and valuable intellectual property, (b) Defendant's advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Plaintiff Linkable such that Plaintiff Linkable could not be made whole by any monetary award, and (c) Defendant Linkable Networks' wrongful conduct, and the resulting damage to Plaintiff Linkable is continuing.

***D. Claim Three
Common Law Trademark Infringement and Unfair Competition
by Defendant Linkable Networks***

46. Plaintiff Linkable realleges and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 47, inclusive.

47. Defendant Linkable Networks' acts referenced here and above constitute common law trademark infringement and unfair competition, and have created and will continue to create a likelihood of confusion, to the irreparable injury of Plaintiff Linkable unless restrained by this Court. Plaintiff Linkable has no adequate remedy of law for this injury.

48. Defendant Linkable Networks' acts, particularly after being notified by Plaintiff Linkable of Defendant Linkable Networks' wrongful infringing activities, with full knowledge of Plaintiff Linkable's protected mark and Plaintiff Linkable's statutory and common law rights therein and without regard to the likelihood of confusion of the public created by Defendant Linkable Networks' activities.

49. Defendant Linkable Networks' actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with Plaintiff Linkable, and to pass-off their goods as those of Plaintiff Linkable, to the great and irreparable injury of Plaintiff Linkable. In addition to being entitled to injunctive relief, Plaintiff Linkable has been damaged in an amount to be determined at trial and is entitled to such damages.

***E. Claim Four
State Trademark Dilution and Injury to Business Reputation***

50. Plaintiff Linkable realleges and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 51 inclusive.

51. Defendant Linkable Networks is making unlicensed and unauthorized commercial use in commerce of Plaintiff Linkable's protected Mark, and Defendant Linkable Networks' activities have
Plaintiff's Original Complaint and Jury Demand

caused and are causing dilution of the quality and value of Plaintiff Linkable's protected Mark. Defendant Linkable Networks' conduct blurs the public's exclusive identification of the Mark with Plaintiff Linkable and dilutes the value of Plaintiff Linkable's intellectual property. As a result of Defendant Linkable Networks' acts referenced here and above, Plaintiff Linkable has suffered and is likely to suffer irreparable injury to its business reputation and trade name.

52. Defendant Linkable Networks' acts constitute a violation of the Texas Anti-Dilution statute, Tex. Bus. & Comm. Code § 16.29. As a result of Defendant Linkable Networks' acts, Defendant Linkable Networks has caused and will continue to cause injury to Plaintiff Linkable, and Plaintiff Linkable is entitled to injunctive relief.

V. JURY DEMAND

53. Plaintiff Linkable hereby demands a trial by jury on all issues and claims so triable.

VI. PRAYER

54. WHEREFORE, Plaintiff Linkable respectfully requests judgment as follows:

- a. That the Court enter a judgment against Defendant Linkable Networks as indicated below:
 - i. That Defendant Linkable Networks has committed trademark infringement in violation of 15 U.S.C. § 1114.
 - ii. That Defendant Linkable Networks has committed and is committing acts of false designation of origin, false or misleading description of fact, and false or misleading representation against Plaintiff Linkable in violation of 15 U.S.C. § 1125(a);
 - iii. that Defendant Linkable Networks has engaged in unfair competition in violation of Texas common law; and
 - iv. that Defendant Linkable Networks has diluted Plaintiff Linkable's protected Mark and has otherwise injured the business reputation and business of Plaintiff Linkable by the acts and conduct set forth in this Complaint.

- b. That the Court issue injunctive relief against Defendant Linkable Networks, and that Defendant Linkable Networks, its directors, principals, officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendant Linkable Networks, be enjoined and restrained from making any other infringing use of the following Trademark Registration No.: 4071374;
- c. That the Court enter an order pursuant to 15 U.S.C. § 1116(a)(d)(1)(A) and 17 U.S.C. § 503 impounding all counterfeit and infringing copies of purported Defendant Linkable Networks' products and/or materials bearing any of Plaintiff Linkable's Mark and any related item, including business records, that is in Defendant Linkable Networks' possession or under its control;
- d. Defendant Linkable Networks be compelled to account to Plaintiff Linkable for any and all profits derived by Defendant Linkable Networks for products, programs or services found to violate Plaintiff Linkable's rights and to pay damages to Plaintiff Linkable for the acts forming the basis of this Complaint;
- e. That the Court order Defendant Linkable Networks to pay Plaintiff Linkable's general, special, actual, and statutory damage as follows:
 - i. Plaintiff Linkable's damages and Defendant Linkable Networks' profits pursuant to 17 U.S.C. § 1117(A), trebled pursuant to 15 U.S.C. § 1117(b) for Defendant Linkable Networks' willful violation of Plaintiff Linkable's registered Mark or in the alternative, statutory damages pursuant to 15 U.S.C. § 1117(c) for each counterfeit mark; and
 - ii. Plaintiff Linkable's damages and Defendant Linkable Networks' profits pursuant to Texas common law.

- f. That the Court order Defendant Linkable Networks to pay Plaintiff Linkable both the costs of this action and the reasonable attorneys' fees incurred by it in prosecuting this action; and
- g. That the Court grant to Plaintiff Linkable such other and additional relief as is just and proper.

Respectfully submitted,

TAYLOR DUNHAM, LLP
301 Congress Ave., Suite 1050
Austin, Texas 78701
512.473.2257 Telephone
512.478.4409 Facsimile

By: /s/ David E. Dunham
David E. Dunham
Attorney-in-charge
State Bar No. 06227700
Email: ddunham@taylordunham.com
Federal ID No.: 37992
Jennifer Tatum Lee
Of counsel
State Bar No. 24046950
Email: jtatum@taylordunham.com
Federal ID No.: 1114389

ATTORNEY FOR PLAINTIFF